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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,168

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Glen S. Axelrod

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04/10/2008

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

MAIL DATE

DELIVERY MODE

04/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/643,168	Applicant(s) AXELROD, GLEN S.	
	Examiner Kimberly S. Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 4, 6-17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 1 is objected to because of the following informalities: it is questioned as to whether at line 11, the "opening" following "end piece" should be deleted as being a redundancy as there is only one opening in the end piece which has previously been addressed by the statement "wherein said opening in said end piece...". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 6-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke, US Patent 5,174,243 in view of Kaplan, D453,242.

O'Rourke discloses an animal chew (10) comprising a body portion (12) having a rigid supporting core (i.e. provided by the interweaving of the individual body sections) and an end piece (14) having a hardness greater than the first hardness of the body portion, wherein the end piece protects the edge section of the body portion by completely overlying the edge section,

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wherein the end piece is configured to engage the body portion comprises an opening (at 16), wherein the opening has a diameter less than the diameter of the body portion (as is viewed in Figure 1), wherein the outer layer of the body portion comprises an elastomer, wherein the body portion comprises a core at least partially covered by the outer layer (as viewed in Figure 4), wherein the end piece includes a plurality of protrusions (i.e. the condyles at 14), wherein the body portion has a hardness on the shore A scale and the end pieces have a hardness on the Shore D scale. However, O'Rourke does not disclose a raised ridge section on the end piece. Kaplan teaches the use of a raised ridge section having conical protrusions attached to an end piece so as to provide an additional chewing surface for the animal. It would have been obvious to one having ordinary skill in the art to use the raised ridge section as taught by Kaplan with the apparatus of O'Rourke so as to provide an additional chewing surface for the animal's enjoyment.

Regarding claims 7-9, 11 and 17, O'Rourke as modified by Kaplan discloses the invention substantially as claimed. However, O'Rourke as modified does not positively disclose the first and second end pieces are thermoplastic, the outer layer is natural rubber, the core is nylon or the entire device is elastomeric. However, it would have been obvious to one having ordinary skill in the art to use a thermoplastic inclusive of nylon as the end pieces, the core being formed of nylon, the outer layer being rubber and the entire device being elastomeric since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and as the applicant has not stated that the use of nylon or the entire device being elastomeric is for any

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particular purpose or solves any stated problem not addressed by the prior art as these are known materials for the composition of chew toys. *In re Leshin*, 125 USPQ 416.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Rourke, US Patent 5,174,243 in view of Kaplan, US D453,242 as applied to claim 1 above, and further in view of Klaus et al., US Patent 6,676,481 (Klaus).

O'Rourke in view of Kaplan discloses the invention substantially as claimed including the body portion being fittingly inserted into the end piece. However, O'Rourke does not disclose the first and second end pieces and body portion including at least one cooperating hole for the insertion of a dowel to attach the end pieces to the body portion. Klaus teaches the use of a dowel inserted into two connecting portions of a toy for providing a secure attachment of the two pieces together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the corresponding hole and dowel to fasten the end pieces to the end portion of the body portion as taught by Klaus with the invention of O'Rourke as modified so as to provide a secure coupling between the two components.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kimberly S Smith/
Primary Examiner, Art Unit 3644
kss

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